



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: January 3, 2016

AGENDA TITLE: Introduction, first reading and motion to publish by title only and adopt as an emergency measure an ordinance adding a new chapter 12-5 “Undocumented Persons” to the Boulder Revised Code establishing city policy regarding undocumented persons and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Tom Carr, City Attorney
Greg Testa, Chief of Police
Karen Rahn, Director of Human Services

EXECUTIVE SUMMARY

At the November 15, 2016 council meeting, the city council directed the city attorney to draft a memorandum providing background regarding sanctuary cities. A copy of the memorandum can be found [here](#). At the December 6, 2016 council meeting after reviewing the material presented and listening to public comment supporting additional council action, the city council directed the city attorney to draft an ordinance providing protections to undocumented persons. Council supported all options presented at the December 6 meeting, but also directed that the ordinance should clarify what would be permissible for city employees. There was not a consensus on council about whether the city should adopt the “sanctuary city” label. Council directed that this be included as an option. At its December 12, 2016 meeting, the Council Agenda Committee scheduled the ordinance for emergency consideration at the January 3, 2016 council meeting.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce, adopt on emergency and order published by title only an ordinance adding a new Chapter 12-5 “Undocumented Persons” to the Boulder Revised Code establishing city policy regarding undocumented persons and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – Although there is some debate, most studies have found that undocumented persons contribute to the economic vitality of a community. Generally, the taxes that undocumented persons pay significantly exceed the cost of government services that they receive. In addition, undocumented persons contribute by adding to a community’s economic activity. Providing protections to undocumented persons should have a positive impact on the Boulder economy.
- Environmental – None identified.
- Social – Undocumented persons contribute significantly the cultural diversity of the Boulder community. Protecting undocumented persons should provide a significant social benefit to the community.

OTHER IMPACTS

- Fiscal – The president-elect has threatened to cut federal funding from sanctuary cities. The city of Boulder receives between \$4 million and \$16 million in federal funding. The large variance is due to the significant increase in funding related to flood recovery. Details can be found in the [December 6, 2016 agenda memo](#). Adopting the proposed ordinance could have a significant fiscal impact on the city.
- Staff time - Current activities are covered by existing department work plans.

BOARD AND COMMISSION FEEDBACK

None.

BACKGROUND

In light of the president-elect’s statements regarding potential deportations and immigration in general, many are concerned about the future of our undocumented community members. The presidential inauguration will be held on January 20, 2017. Council members expressed an interest in considering an ordinance that would be effective prior to the inauguration.

DISCUSSION

The Proposed Ordinance

Terminology

The ordinance uses the term “undocumented persons.” There are several reasons for the choice of this term. First, as is discussed below, it is not a crime to remain in the United States without complying with the immigration laws. It is a civil violation, punishable by deportation. It is a crime to enter the country illegally or to enter after being subjected to a deportation order. Many undocumented persons fall into the civil violation category and not the criminal one. Labeling all undocumented persons as “illegal” is over-inclusive. In addition, people generally are not considered to be illegal. National Public Radio’s Maria Hinojosa recounted a conversation that she had with Nobel Prize winner Elie Wiesel, who is often quoted as saying “No Human Being is Illegal:

[H]e said, ‘María, don’t ever use the term ‘illegal immigrant.’ And I said, ‘Why?’ And he said, ‘Because once you label a people ‘illegal,’ that is exactly what the Nazis did to Jews.’ You do not label a people ‘illegal.’ They have committed an illegal act. They are immigrants who crossed illegally. They are immigrants who crossed without papers. They are immigrants who crossed without permission. They are living in this country without permission. But they are not an illegal people.”¹

The Associated Press struck the term from its style guide in 2013. Other media outlets, including USA Today, the Los Angeles Times, have followed the AP’s lead. It is therefore appropriate that the city’s ordinance use the term “undocumented.” The ordinance uses the term “persons” rather than “residents” because the protections are intended for both residents and visitors.

The Purpose and Intent

Council members directed that the proposed ordinance include strong statements of the city’s intent to be inclusive and to recognize the important contributions of undocumented persons in the community. Section one of the ordinance includes these statements.

The proposed ordinance in Attachment A includes only these statements. The proposed ordinance in Attachment B includes a statement that the city should be considered at sanctuary city.

Prohibited Activities

The ordinance includes five prohibited activities. These are intended to clarify existing city policy. The prohibitions are found in proposed new Section 12-5-2 and are as follows:

¹ NPR anchor ties term ‘illegal immigrant’ to Nazi Germany, October 7, 2012, <http://www.rawstory.com/2012/10/npr-anchor-ties-term-illegal-immigrant-to-nazi-germany/>

- (a) No city employee shall inquire into a person's immigration status.
- (b) No city employee shall take any action based on a person's immigration status.
- (c) No city employee shall cooperate with any federal authority with respect to any investigation of a person's immigration status.
- (d) No city funds shall be used to assist with any investigation into a person's immigration status.
- (e) No city funds shall be used to assist in the detention of any person based on a person's suspected immigration status.

Permitted Activities

Because the ordinance includes broad language prohibiting the use of city funds, it is important to clarify what city employees will be permitted to do. The permitted activities are found in proposed new Section 12-5-2. The permitted activities section makes clear that nothing in the ordinance prohibits:

- (a) Any city employee from discussing a person's immigration status as part of a service request from that person;
- (b) Any city employee from obeying any lawful order issued with all of the protections of the United States Constitution, including but not limited to probable cause and due process;
- (c) Any city employee from taking any action to protect a person or respond to an emergency; or
- (d) Any city police officer from investigating or assisting with any investigation of criminal activity other than violation of the immigration laws.

Staff recommends inclusion of these permitted activities, because they provide clarity for city employees and in some circumstances additional protections for undocumented persons.

Subsection (a) would allow a city employee to discuss a person's immigration status as part of a service request from the person. For example, a domestic violence victim might fear her batterer, because of her immigration status. It should be permissible for a person investigating to understand the victim's concerns. In addition, the Human Relations Commission intends to discuss adding immigration status as a protected classification under the city's anti-discrimination law. Chapter 12-1 "Prohibition of Discrimination in Housing, Employment, and Public Accommodations," B.R.C. 1981. This section would make clear that a person seeking protection from discrimination could discuss his or her immigration status with a city employee assigned to provide such a service. Finally, in the past, the police department has contacted federal authorities to determine whether a person reported as missing was being held on an immigration detainer. This would be considered part of providing service and not prohibited.

Subsection (b) is an attempt to protect city employees from being forced to violate the law. If a court has issued a lawful warrant, with full constitutional protections, a city

employee would be permitted to comply. The issue with immigration detainers is that they are issued by U.S. Immigrations and Customs Enforcement without any constitutional protections. Courts have found that compliance with such orders violates the constitutional rights of persons detained.

Subsection (c) is intended to clarify that nothing in the ordinance would prohibit city employees from acting to protect a person or to respond to an emergency. This could range from allowing firefighters to extinguish a fire in a border patrol agent's car to allowing the police to protect such an agent who was in physical danger.

Subsection (d) clarifies that the limitations in the ordinance apply only to enforcement of the immigration laws. ICE investigates a wide variety of cases, not just immigration violations. ICE investigates crimes involving Child Exploitation; Cultural Property, Art, and Antiquities; Human Smuggling; Human Trafficking; Narcotics; Money Laundering; Firearms, Ammunition, and Explosives Smuggling; Homeland Security; Gangs; and Cyber Crimes. The Boulder Police Department works with ICE on these crimes. This subsection makes clear that a police officer can work with ICE on criminal violations not involving a violation of the immigration laws. In addition, the police department will occasionally need to contact ICE or the state department for assistance in locating or identifying a suspect. These actions would still be permitted.

Attachments

Attachment A – Proposed Ordinance without Sanctuary City Declaration

Attachment B – Proposed Ordinance with Sanctuary City Declaration